PRIVY COUNCIL REPORT

JB Jeyaratnam v Law Society of Singapore

PRIVY COUNCIL – PRIVY COUNCIL APPEAL NO 10 OF 1988
LORD BRIDGE OF HARWICH, LORD TEMPLEMAN, LORD ACKNER, LORD OLIVER OF AYLMERTON AND LORD JAUNCEY OF TULLICHETTLE
21 NOVEMBER 1988

Legal Profession – Disciplinary proceedings – Striking off the roll upon conviction for offences – Whether court may go behind convictions – Legal Profession Act (Cap 161, 1985 Ed), s 80(2)(a)

Legal Profession – Disciplinary proceedings – Full bench of three judges hearing show cause action – Whether Chief Justice must be a member of the full bench of three judges – Legal Profession Act (Cap 161, 1985 Ed), s 95(6)

Civil Procedure – Appellate court's function – Findings of fact – Power of appellate court to reverse trial judge's findings of fact

Civil Procedure – Reservation of questions of law for decision by the Court of Criminal Appeal – Questions of law of public interest

Criminal Law – Dishonest or fraudulent removal of property to prevent distribution among creditors – Elements of offence – Necessity that property belongs to the debtor – Voluntary donations – Effect of donor's consent to transfer of gift from debtor to another person – Penal Code (Cap 103, 1970 Ed), s 421

Criminal Law – False statement in declaration receivable as evidence – Statement verifying accounts – Exhibited in affidavit of Official Receiver – Whether statement may be the subject of a charge for false declaration – Penal Code (Cap 103, 1970 Ed), s 199

Criminal Procedure – Convictions – No appeal to court of Criminal Appeal – Convictions 'vitiated' by mistakes – Petition for presidential pardon

On 19 October 1987, the High Court of Singapore (consisting of a full bench of three judges presided over by the Chief Justice) ordered that the appellant be struck off the roll of advocates and solicitors. The ground on which the order was made was that the appellant had been convicted of criminal offences implying a defect of character making him unfit for his profession under s 80(2)(a) of the Legal Profession Act (Cap 161, 1985 Ed) (see [1988] 1 MLJ 353). The circumstances under which the convictions came about were as follows.

The appellant was the secretary-general of the Workers' Party. The Workers' Party sued one Tay Boon Too ('Tay') for slander in respect of words spoken in the 1972 general election campaign. The action was dismissed with costs, which were not paid. On 19 January 1982, the appellant received a cheque for $2,000 from a Dr Chew payable to the Workers' Party (the $2,000) cheque. This cheque was endorsed by the appellant and Wong Hong Toy ('Wong'), the party chairman, in favour of a Madam Chiew to help meet her liability for the costs of an unsuccessful election petition brought against the appellant's opponent in 1980 general election. This was done with the concurrence of the donor, Dr Chew. On 23 January 1982, Tay's solicitor wrote demanding payment of the outstanding costs of the Workers' Party's unsuccessful slander action against him. On 3 February 1982, Tay applied for leave to execute for the unpaid costs. On 17 February 1982, the $2,000 cheque was handed to Madam Chiew's solicitors. On 22 February 1982, Tay was granted leave to execute and the court made a garnishee order on the Workers' Party's bank account. There was only $18.47 standing to that account.

On 10 March 1982, the appellant and Wong received a cheque for $200 (the '$200 cheque') from a Mr Ping. This cheque was made out to the Workers' Party. Mr Ping altered the cheque to a bearer cheque, and it was paid into Wong's personal account. Wong drew out $200 and handed it to Madam Chiew's solicitors as a contribution towards her liability for costs on her unsuccessful election petition.

On 22 May 1982, Tay applied to the court for the appointment of a receiver by way of equitable execution. On the same day, a Mr Lim made a donation of $400 to the Workers' Party in the form of a crossed cheque (the '$400 cheque'). On 1 June 1982, the Official Receiver was appointed as receiver of the Workers' Party's assets. Some days later, Mr Lim was invited by Wong in the presence of the appellant to alter the $400 cheque to a cash cheque.

In the course of the receivership, the Official Receiver requested the appellant and Wong to make a statutory declaration to confirm the accounts. This was duly done. The accounts contained no entries referring to any of the three cheques. The declaration was not a valid statutory declaration as material words had been omitted. The declaration was, however, exhibited in an affidavit sworn by the Official Receiver.

Arising out of the facts narrated, the appellant and Wong were charged with three counts under s 421 of the Penal Code (Cap 103, 1970 Ed) for dishonestly or fraudulently removing property of the Workers' Party intending to prevent the distribution of the same to the Party's creditors. They also faced one charge under s 199 of the Penal Code (Cap 103, 1970 Ed) for making a false declaration receivable in evidence. At the trial before Mr Michael Khoo, the Senior District Judge, the appellant and Wong were acquitted of the charges in relation to the $2,000 and $200 cheques but convicted on the charge in relation to the $400 cheque. They were also acquitted on the s 199 charge. On appeal to the High Court, the Chief Justice reversed the acquittals on the two s 421 charges and remitted the s 199 charge for re-trial (see [1986] 1 MLJ 133). He declined to reserve a question of law for the decision of the Court of Criminal Appeal. The re-trial was heard by Mr Errol Foenander, the new Senior District Judge. The appellant and Wong were convicted. The appeal against this conviction was dismissed by the High Court (see [1988] 2 MLJ 553). Lai J, who heard the appeal, also declined to reserve a question of law for the decision of the Court of Criminal Appeal.

As a result of the convictions, the Law Society began disciplinary proceedings against the appellant. The instant appeal to the Privy Council was consequent upon the decision of the full bench of the High Court to strike the appellant off the roll.

Held, allowing the appeal:

(1) The Chief Justice should not have sat as a member of the full bench of the High Court which heard the show cause proceedings, since one of the primary submissions of the appellant was that the Chief Justice's own decision on the appeal from Judge Khoo and his refusal to reserve questions of law for the Court of Criminal Appeal were erroneous. Section 95(6) of the Legal Profession Act (Cap 161, 1985 Ed) is not mandatory but directory only.

(2) Although it is usually not open to the court hearing a show cause action against an advocate and solicitor to go behind a conviction in order to determine whether or not the conviction was proper, the circumstances in this case were exceptional enough to warrant examination of the grounds on which the convictions were attacked as being bad in law.

(3) As the High Court had declined to reserve questions of law for decision by the Court of Criminal Appeal, the appellant had no opportunity to test any of the questions of law involved by appeal to the Court of Criminal Appeal. Their Lordships found it difficult to understand how any serious question of law arising in a criminal case on which a person's conviction might depend could be said not to be of public interest within the meaning of s 60(1) of the Supreme Court of Judicature Act (Cap 15, 1970 Ed). If it could be shown that there were questions of law of public interest which should have been reserved for decision by the Court of Criminal Appeal and that this would have led to the quashing of the convictions, the convictions should not be conclusive against the accused in the course of disciplinary proceedings. The instant appeal therefore turned on the question whether the convictions were vitiated by errors of law.

(4) The declaration sworn by the appellant and Wong was not per se admissible as evidence of any fact so as to bring it within the scope of s 199 of the Penal Code (Cap 103, 1970 Ed). The s 199 charge was misconceived in law as held by Judge Khoo.

(5) To prove the s 421 charges, it was necessary to show that the money became the property of the Workers' Party. It was found by Judge Khoo that the $2,000 cheque and the $200 cheque had been transferred with the concurrence of the donors. Similarly, the $400 cheque had been disposed of with the consent of the donor before it was presented for payment by the Workers' Party. The Workers' Party never had more than a defeasible title to the proceeds of the cheques. Before the title was perfected, the cheque was in each case lawfully disposed of in accordance with the donor's instructions. Accordingly, the proceeds of the cheques never became the property of the Party and the appellant and Wong could not have been guilty of an offence under s 421 of the Penal Code (Cap 103, 1970 Ed).

(6) The Chief Justice, as an appellate judge, was not entitled to substitute his own findings of fact for those of Judge Khoo on the question of the donors' consent to the disposal of the $2,000 cheque and the $200 cheque. The judgment of the Chief Justice had started from a false premise with respect to the trial judge's assessment of the evidence and had proceeded upon a clear misdirection with respect to the onus of proof. For these reasons, it could not be supported.

(7) The convictions of the appellant were vitiated by errors of law. His appeal against being struck off the roll was accordingly allowed.

Case referred to

1 *Ratnam* v *Law Society of Singapore* [1976] 1 MLJ 195 (refd)

Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Ed) ss 184, 245, 247, 252(3)
Judicial Committee Act (Cap 148, 1985 Ed) s 3(1)(a)
Legal Profession Act (Cap 161, 1985 Ed) ss 80, 95(6), (8)
Penal Code (Cap 103, 1970 Ed) ss 193, 199, 421
Rules of the Supreme Court 1970 O 41 r 5(2)
Supreme Court of Judicature Act (Cap 15, 1970 Ed) ss 44(1), 60(1)
Statutory Declarations Act 1835 [UK]

Martin Thomas QC (*Robert Britton* with him) for the appellant.

Robert Reid QC (*Goh Joon Seng* with him) for the respondent.

Cur Adv Vult

Lord Bridge of Harwich (delivering the judgment of the Board): On 19 October 1987 the High Court of Singapore ordered that the appellant be struck off the roll of advocates and solicitors of the Supreme Court of Singapore. On 25 October 1988 their Lordships allowed the appellant's appeal from that order indicating that they would give the reasons for their decision later. This they now do.

The background

The Workers' Party of Singapore is a political party in the ordinary sense, but is also, unlike English political parties, a body having legal personality under Singapore law. The appellant is the secretary-general of the Workers' Party. In 1972 the Workers' Party sued Tay Boon Too ('Tay'), a member of Parliament, for slander in respect of words spoken in the 1972 general election campaign. The action failed and the Workers' Party were ordered to pay Tay's costs. A liability under this order for a sum exceeding $17,000 remained unsatisfied.

In the 1980 general election the appellant himself stood unsuccessfully as a Workers' Party candidate for Parliament. Madam Chiew Kim Kiat ('Mdm Chiew'), the mother of the appellant's election agent, brought an election petition against the appellant's successful opponent alleging electoral irregularities. The petition was dismissed with costs.

In 1981 the appellant was elected to Parliament in a by-election and became the sole member in opposition to the ruling People's Action Party. At the general election in 1984 he was re-elected.

The crucial events of 1982

By the beginning of 1982 the judgment debt for the balance of Tay's costs, after the lapse of more than six years, had become unenforceable by execution without the leave of the court. Early in 1982 bankruptcy proceedings were instituted against Mdm Chiew in respect of the unpaid balance of her liability for costs incurred in the unsuccessful election petition proceedings. The salient events in 1982 are best recounted in chronological order.

On 19 January the appellant received by post a cheque drawn by Dr Ivy Chew Wan Heong ('Dr Chew') for $2,000 made payable to the Workers' Party ('the $2,000 cheque'). This was then endorsed by the appellant and Wong Hong Toy ('Wong'), the chairman of the Workers' Party, in favour of Mdm Chiew's solicitors as a

contribution to help meet her liability for costs in respect of the election petition proceedings. On 23 January Tay's solicitor wrote to the appellant's firm, as solicitors for the Workers' Party, demanding payment of the costs due to Tay. On 3 February Tay applied to the court for leave to execute for the unpaid costs. On 17 February the $2,000 cheque was handed to Madam Chiew's solicitors. On 22 February Tay was granted leave to execute and the court made a garnishee order in his favour on the Workers' Party's bank account. On 8 March the garnishee order was made absolute and the bank paid over the balance of $18.47 standing to the credit of the Workers' Party's account. On 10 March the appellant and Wong received a cheque for $200 drawn by Ping Koon Yam ('Ping') in favour of the Workers' Party with the word 'bearer' crossed out ('the $200 cheque'). Ping then altered the cheque to a bearer cheque by overriding the cancellation of the word 'bearer'. The cheque was paid into Wong's personal account. Wong drew $200 in cash from the account and handed it to Mdm Chiew's solicitors as a contribution towards her liability for costs. On 12 March, the date fixed for the hearing of the bankruptcy petition against Mdm Chiew, her solicitors were able to discharge her outstanding liability for costs by handing over to the petitioner's solicitors $2,655 including the proceeds of the $2,000 and $200 cheques and other money collected for her by the Workers' Party.

On 22 May Tay applied to the court for the appointment of a receiver by way of equitable execution. On the same day Willie Lim Tian Sze ('Willie Lim') made a donation to the Workers' Party in the form of a crossed cheque for $400 payable to the Workers' Party ('the $400 cheque'). On 1 June the Official Receiver was appointed by the court as receiver of the Workers' Party's assets. Some days later Willie Lim was invited by Wong in the presence of the appellant to alter the $400 cheque and agreed to do so. He uncrossed the cheque and made it payable not to the Workers' Party but to cash.

On 21 July the Official Receiver wrote to A Balakrishnan, the treasurer of the Workers' Party, asking for the accounts of the Workers' Party for 1980, 1981 and up to 3 June 1982, and for all the relevant account books, vouchers and other accounting documents for this period. Balakrishnan complied with this request and, in response to a further request, filed an affidavit verifying the accounts for the period 1 January to 16 June 1982. The accounts contained no entries referring to the transactions represented by the cheques previously referred to.

The Official Receiver then requested the appellant and Wong, as secretary-general and chairman of the Workers' Party, to make a statutory declaration to confirm the accounts. A document purporting to be a joint statutory declaration verifying the accounts was submitted to the appellant and Wong in a form drafted by the Official Receiver and they duly went through the formalities of making the declaration. It is common ground, however, that the document was not a statutory declaration at all, since it did not contain the vital words 'and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835'. On 6 August the Official Receiver swore his own affidavit, which was duly lodged in the court, verifying his own account of the receivership and exhibiting, inter alia, the declaration by the appellant and Wong in support of his own statement of information and belief that the exhibited accounts of the Workers' Party were true.

The criminal proceedings

Arising out of these events the appellant and Wong were jointly charged with three offences and each was separately charged with a fourth offence. The three joint charges were laid under s 421 of the Singapore Penal Code (Cap 103, 1970 Ed) which provides:

> Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

These charges ('the cheque charges') related to the disposal of the $2,000, $200 and $400 cheques respectively. The ingredients of each of these offences which the prosecution needed to prove were:

(1) that the cheque was the property of the Workers' Party;
(2) that the accused jointly transferred it without adequate consideration;
(3) that they did so intending or knowing that it would be likely to prevent the distribution of the property according to law amongst the creditors of the Workers' Party, meaning thereby the payment of the proceeds of the cheque to the creditor Tay;
(4) that in so doing they acted fraudulently.

The fourth separate charge against each accused was laid under s 199 of the Penal Code which provides:

> Whoever, in any declaration made or subscribed by him, which declaration any court of justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

These charges ('the accounts charges') related to the purported statutory declaration. The falsity alleged was the omission in the accounts which the declaration verified of any entry relating to the cheques which were the subject of the cheque charges. In this sense the accounts charges were parasitic upon the cheque charges. It was alleged that the accused had, so to speak, compounded their fraudulent dealings with the cheques by failing to own up to them when they were required to verify the accounts. But an offence under s 199 is much graver than an offence under s 421. It is treated as equivalent to an offence of perjury under s 193 and is punishable by up to seven years' imprisonment.

The first trial

These charges came for trial before Senior District Judge Michael Khoo. He gave written reasons for his decision on 30 March 1984.

Judge Khoo ruled at the close of the prosecution case that there was no case to answer on the accounts charges on the ground that the purported statutory declaration, lacking the essential words of affirmation, was not within s 199. He rejected a submission that it was a document, which 'any court of justice' was 'bound or authorized to receive as evidence of any fact' because it could be, as it was, exhibited to the affidavit of the Official Receiver in the receivership proceedings in support of his own accounts. Judge Khoo refused various applications by the prosecution to substitute amended charges for the accounts charges under s 199.

Judge Khoo acquitted both accused of the charges in respect of the $2,000 and $200 cheques. He held that in each case the prosecution had failed to prove that the cheque was, at the material time, the property of the Workers' Party. In the case of the $2,000 cheque he accepted the evidence of the appellant that he had received a note from Dr Chew with the cheque authorizing him to use it as he thought fit, and that after deciding to use the money to help Mdm Chiew meet her liability for costs he had confirmed with Dr Chew that he could use the money as he wished. The receipt and disposal of the $2,000 cheque were reported to a meeting of the executive council of the Workers' Party on 16 February 1982 and recorded in the minutes. In the case of the $200 cheque Judge Khoo accepted the evidence of both accused that Ping, the donor, had agreed that the proceeds of the cheque should be used to help Mdm Chiew and, instead of making out a further cheque payable to Mdm Chiew, had altered the cheque to make it payable to bearer.

Judge Khoo found confirmation of these findings in two statutory declarations by Dr Chew which had been tendered in evidence (presumably without objection) and in a contemporary record kept by Wong of money collected for Madam Chiew, which included a reference to Ping's $200 and which the judge accepted as genuine.

The explanations given by the defence in relation to the $2,000 and $200 cheques accorded with what they had told the police when first questioned. Judge Khoo noted that the prosecution had taken statements from Dr Chew and Ping and subpoenaed them but had elected not to call them to testify.

Independently of his findings that these two cheques were not the property of the Workers' Party, Judge Khoo carefully analysed the evidence bearing upon the chronology of the steps taken to enforce Tay's judgment for the balance of the costs of the 1972 action in relation to the actions of the accused in their dealings with the two cheques. He expressed his conclusion thus:

> Having regard therefore to all the circumstances surrounding the receipt of the cheques, the time of their receipt and their eventual disbursement to the solicitors of Mdm Chiew and the reasons therefore, I was not satisfied that the acts of the accused in the delivery of the cheques were done with a fraudulent intention to prevent their distribution according to law, amongst the creditors of the party.

Judge Khoo convicted both accused of the $400 cheque charge. He accepted the evidence of Willie Lim, disputed by the defence, that it was on a date after the appointment of the receiver that he agreed, at the invitation of Wong and in the presence of the appellant, to alter his cheque to make it payable to cash and that this was done expressly to prevent the proceeds reaching the receiver on behalf of Tay. The judge drew the inference from this evidence and the subsequent encashment of the cheque that Wong and the appellant had acted jointly in transferring the property of the Workers' Party in the $400 cheque without adequate consideration and with the fraudulent intention of preventing the property being distributed according to law amongst the party's creditors, sc by payment to the receiver for the creditor Tay. Each accused was sentenced to pay a fine of $1,000.

The first appeal

Under the Singapore Criminal Procedure Code appeal lies from the District Court to the High Court against conviction or sentence by the accused and against acquittal or sentence by the Public Prosecutor: ss 245 and 247. The appeal is ordinarily to be heard by a single judge: s 252(3). The grounds on which the High Court are to act are indicated, somewhat obliquely, by s 261 which provides:

> No judgment, sentence or order of a District Court ... shall be reversed or set aside unless it is shown to the satisfaction of the High Court that the judgment, acquittal, sentence or order was either wrong in law or against the weight of the evidence, or, in the case of a sentence, manifestly excessive or inadequate in the circumstances of the case.

In this case the Public Prosecutor appealed against the acquittals on the accounts charges and the first two cheque charges and also against sentence on the $400 cheque charge. The appellant and Wong appealed against conviction on the $400 cheque charge. These appeals were heard by Wee Chong Jin CJ in May 1984. He gave judgment in writing on 18 April 1985.

Dealing with the accounts charges, the Chief Justice reasoned as follows. Under O 30 of the Rules of the Supreme Court the receiver appointed by the court was required to submit accounts to the court and to verify them by affidavit. Under O 4 r 5(2) an affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof. The Chief Justice concluded:

> In my judgment, the declaration, being a document which was permitted by O 41 r 5(2) to form part of the affidavit accompanying the receiver's own account presented to the High Court for passing and certification, was a declaration which the court was authorized by the Rules of the Supreme Court to receive as evidence in the receivership proceedings.

He therefore set aside the acquittal and ordered a retrial of both accused on the accounts charges.

The judgment of the Chief Justice dealing with the charges relating to the $2,000 and $200 cheques is extremely long and their Lordships find some of the reasoning difficult to follow. Since it will be necessary later in this judgment to return to examine this part of the judgment of the Chief Justice to see whether it can be supported, their Lordships will not at this point attempt to do more than summarize its salient features. The Chief Justice began with an unexceptionable statement of the principles governing his appellate jurisdiction under the Criminal Procedure Code as follows:

> It is settled law that this court in the exercise of its statutory appellate criminal jurisdiction has full power to review at large the evidence upon which an order of conviction or acquittal was founded and to reach the conclusion that upon that evidence the order should be reversed. In reviewing the evidence and before reaching its conclusions upon fact this court should always give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of witnesses; (2) the presumption of innocence in favour of the accused; (3) the right of the accused to the benefit of the doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.

He went on, however, to reject as untrue the evidence which the trial judge had accepted as true given by the appellant and Wong in the two vital areas, namely, with respect to their communications with Dr Chew and Ping, the donors of the two cheques, regarding the donor's intentions with respect to the disposal of the proceeds of the cheques. He held, in effect, that the cheques themselves were so made out as to found an inference that they were the property of the Workers' Party and that this could only be rebutted by the defence calling Dr Chew and Ping to give evidence. He further declared himself satisfied, contrary to the view of the trial judge, that the transfers had been fraudulently intended to prevent the distribution of the property according to law amongst the creditors of the Workers' Party. He therefore allowed the Public Prosecutor's appeal against acquittal on both these charges and sentenced each of the accused to pay a fine of $1,000 on each charge.

On the $400 charge the Chief Justice dismissed both the appeals of the accused against conviction and that of the Public Prosecutor against sentence.

On 21 June 1985 the appellant and Wong applied to the Chief Justice pursuant to s 60(1) of the Supreme Court of Judicature Act (Cap 15, 1970 Ed) that he should reserve certain questions of law arising from his decision on the appeals from Judge Khoo for the decision of the Court of Criminal Appeal. The subsection provides:

> When an appeal from a decision of a subordinate court in a criminal matter has been determined by the High Court the judge may on the application of any party and shall on the application of the Public Prosecutor reserve for the decision of the Court of Criminal Appeal any question of law of public interest which has arisen in the course of the appeal and the determination of which by the judge has affected the event of the appeal.

The questions of law which the Chief Justice was asked to reserve included the following:

(1) On the accounts charges: 'whether the declaration by the respondents was a declaration within the scope and meaning of s 199 of the Penal Code.'

(2) On the $2,000 and $200 cheque charges:

'(a) whether the property in the cheques for $2,000 and $200 was in the Workers' Party before the cheques were negotiated;

(b) on whom was the onus to prove the property of the cheques in the Workers' Party and whether such onus was discharged by the party on whom it lay on the whole of the evidence adduce before the court;

(c) whether the said onus shifted at any time from one party to the other, alternatively whether there was any onus on the respondents at any stage of the trial to prove that the property in the said cheques was not in the Workers' Party;

(d) whether on the whole of the evidence adduced before the court the prosecution had discharged the onus on it to satisfy the court that the respondents fraudulently transferred the property in the said cheques assuming the property in the said cheques was in the Workers' Party;

(e) whether the High Court was right and justified on well-established principles of law in disturbing the very careful findings of fact made by the trial judge before acquitting the respondents on the charges.'

(3) On the $400 cheque charge: 'whether the property in the cheque for $400 remained with the Workers' Party after the end of May 1982 and in particular was it so on 2 July 1982 when the proceeds of the cheque were realized.'

The Chief Justice refused this application on the ground that none of these questions were questions of law and that, even if they were, they were not of public interest.

The appellant and Wong nevertheless sought to appeal to the Court of Criminal Appeal but failed, as they were bound to, because s 44(1) only gives jurisdiction to the Court of Criminal Appeal to hear an appeal 'against any decision by the High Court in the exercise of its original criminal jurisdiction ... '. There is thus no avenue of appeal from the decision of a High Court judge exercising appellate jurisdiction from the District Court under s 247 of the Criminal Procedure Code unlesss that judge has reserved a question of law for decision by the Court of Criminal Appeal pursuant to s 60(1) of the Supreme Court of Judicature Act. It was so held by the Court of Criminal Appeal (Lai Kew Chai J, LP Thean J and FH Chua J) dismissing the appeals of the appellant and Wong on 9 October 1985. This decision was, in effect, affirmed when special leave to appeal to the Judicial Committee of the Privy Council was refused on 6 March 1986.

The re-trial on the accounts charges

Having failed to persuade the Chief Justice to reserve the question of law arising on the construction of s 199 of the Penal Code, it is not surprising that the appellant and Wong then applied to have the re-trial transferred from the District Court to the High Court pursuant to s 184 of the Criminal Procedure Code. If this application had succeeded, it would have opened up an avenue of appeal on the issue whether the joint declaration was a document which a 'court of justice ... is bound or authorized by law to receive as evidence of any fact' to the Court of Criminal Appeal in the first instance and, if necessary, to the Judicial Committee of the Privy Council. This was the manifest purpose of the application. Their Lordships must confess their astonishment that LP Thean J, in refusing this application, held that any attempt to reopen this issue and or go behind the Chief Justice's ruling would be an abuse of the process of the court. It was further urged that as secretary-general and chairman of a political party in opposition to the party in power facing a charge with such serious implications, the appellant and Wong should, in any event, be tried by the High Court not the District Court. LP Thean J dismissed this consideration as irrelevant.

Re-trial accordingly took place before Judge Foenander, who had now replaced Judge Khoo as Senior District Judge. He gave judgment convicting both accused on 8 April 1986 and sentenced both to three months' imprisonment. Both appealed to the High Court against conviction and sentence. The appeal was heard by Lai Kew Chai J. On 10 November 1986 he dismissed the appeals against conviction, but allowed the appeals against sentence to the extent of substituting for the sentence of three months' imprisonment in each case a sentence of one month's imprisonment plus a fine of $5,000. For the appellant this was indeed a Pyrrhic victory, since a person sentenced to pay a fine of $5,000 or more on any single criminal charge is automatically disqualified for five years from membership of Parliament. The appellant thus lost his seat as the single opposition member and was unable to stand at the next general election in 1988.

The proceedings on the re-trial and appeal followed a predictable course. Both Judge Foenander at first instance and Lai Kew Chai J on appeal applied the reasoning of the Chief Justice in holding that the declaration verifying the accounts fell within s 199 of the Penal Code and found that the accounts were false in omitting reference to the cheques which had been the subject of the cheque charges. On the re-trial neither the appellant nor Wong gave evidence.

An application to Lai Kew Chai J under s 60(1) of the Supreme Court of Judicature Act to reserve, inter alia, a question of law as to whether, on its true construction, s 199 of the Penal Code applied to the joint declaration verifying the accounts was refused on 11 November 1986. The question, although more elaborately formulated, was essentially the same as the question which the Chief Justice had refused to reserve in June 1985. Again predictably, Lai Kew Chai J echoed, albeit at greater length, the view of the Chief Justice that the question was not one of law or, if it was, was not of public interest. No question having been reserved, further attempts by Wong and the appellant to challenge their convictions on the accounts charges before the Court of Criminal Appeal and by way of application for special leave to appeal to the Judicial Committee of the Privy Council failed, as they were bound to, for want of jurisdiction.

The disciplinary proceedings

Under s 80 of the Legal Profession Act an advocate and solicitor is liable to be struck off the roll, suspended or censured on the ground, inter alia, that he 'has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession'. On

14 November 1986 the Attorney General reported to the Law Society of Singapore that the appellant had been convicted of three offences under s 421 and one offence under s 199 of the Penal Code, asserted that the offences implied a defect of character which made him unfit for his profession and requested that the matter be referred to a Disciplinary Committee. Thereafter the disciplinary proceedings followed a course which, save in one respect, was inevitable. The Disciplinary Committee reported that the appellant had been convicted of criminal offences implying a defect of character which made him unfit for his profession and that cause of sufficient gravity existed for disciplinary action to be taken. The appellant was thereupon summoned to show cause why he should not be truck off, suspended or censured. Realistically the only chance that the appellant had of avoiding being struck off was if the court could be persuaded to go behind the convictions. The matter came before the Chief Justice, FA Chua J and Chan Sek Keong JC. At the outset objection was taken to the Chief Justice sitting on the ground that it would be inappropriate in the light of the history, although no bias or prejudice was alleged against him. The court rejected the objection. Section 95(6) of the Legal Profession Act provides that the proceedings on the summons to show cause 'shall be heard by a court of three judges of whom the Chief Justice shall be one'. The court held this provision to be mandatory. The court went on to hold that there were no exceptional circumstances to justify going behind the convictions and that, in any event, the convictions were unimpeachable. Given offences of such gravity, an order that the appellant be struck off the roll of advocates and solicitors inexorably followed.

Their Lordships must record their opinion that the refusal of the appellant's objection to the Chief Justice sitting was both erroneous and unfortunate. It was erroneous because, in their Lordships' judgment, the relevant provision of s 95(6) is clearly not mandatory but directory only. Section 95(8) in terms provides:

> The Chief Justice or any other judge of the Supreme Court shall not be a member of the court of three judges when the application under subsection (6) is in respect of a complaint made or information referred to the Society by him.

It would be absurd that the Chief Justice should not be able to disqualify himself from sitting if the advocate and solicitor facing disciplinary charges was either a close relative or a sworn enemy or for any other good reason. The refusal of the objection was unfortunate because the court was to be invited to go behind and condemn the Chief Justice's own decision on the appeals from Judge Khoo and his later refusal to reserve questions of law for the Court of Criminal Appeal. It was quite unacceptable that he should preside. Justice might be done, but certainly could not be seen to be done.

The order that the appellant be struck off was made on 19 October 1987. The court refused a stay of execution. Leave to appeal to the Judicial Committee of the Privy Council was granted pursuant to s 3(1)(a) of the Judicial Committee Act (Cap 148, 1985 Ed) on 4 November 1987. An application to the Board for a stay of execution was refused on 21 December 1987. The judgment giving the court's reasons for the decision that the appellant should be struck off was delivered on 12 January 1988.

The issues in the appeal

A number of grounds were advanced in the appellant's written case. Their Lordships only found it necessary to examine two questions. First, were there exceptional circumstances which justified the court in the disciplinary proceedings, and the Board on appeal, in going behind the convictions? Secondly, if so were the convictions flawed? Inevitably the two questions overlap since any conclusion as to the propriety of going behind the convictions depends to an extent on the nature of the attack on the convictions.

The question whether it is possible in disciplinary proceedings under the Singapore Legal Profession Act to go behind convictions relied upon as the basis of a disciplinary charge was considered in *Ratnam* v *Law Society of Singapore*.[1] Delivering the judgment of the Board, Lord Simon of Glaisdale said at pp 200, 201:

> There is a preliminary point which arises – namely, whether in disciplinary proceedings under the Legal Profession Act it is open, for the purposes of s 84(2)(a) (conviction implying a defect of character) to go behind the conviction and inquire whether it was correctly made.
>
> The Disciplinary Committee held that it was not open to them to go behind the conviction. The High Court assumed that it was open to them to go behind the conviction; though, having done so, they held that the appellant was rightly convicted. It is, strictly, unnecessary for their Lordships to express an opinion on this point ... But, since the matter was fully argued before their Lordships, they think it proper to state that they agree with the view of the High Court. They would, however, add this rider. Although it is open to go behind the conviction, this would only be justified in exceptional circumstances. Their Lordships will not attempt to lay down what circumstances should be considered so exceptional as to permit the question whether the accused had been rightly convicted to be raised, beyond saying that an important consideration would be whether an appeal against the conviction had been available. For example, if a plea of guilty had been made under a misunderstanding, and there was no opportunity of rectifying it on appeal, justice would demand that the conviction should not be conclusive against the accused in the course of disciplinary proceedings, the object of which themselves is, after all, to promote justice.

In the instant case their Lordships consider the following circumstances sufficiently exceptional at least to warrant

examination of the grounds on which the convictions are attacked as bad in law. The conviction of the appellant on the accounts charge depends on a construction of s 199 of the Penal Code first propounded by the Chief Justice sitting as a single judge and later adopted by Judge Foenander and Lai Kew Chai J, which is attacked as bad in law. The convictions on the $2,000 and $200 cheque charges depend on findings of fact by the Chief Justice reversing the primary findings of the trial judge on grounds which are attacked as bad in law. The affirmation by the Chief Justice of the conviction by Judge Khoo of the $400 cheque charge is attacked as bad in law. The appellant has had no opportunity to test any of the questions of law which he claims are involved by appeal to the Court of Criminal Appeal of Singpore or, if necessary, by further appeal to the Board, because the Chief Justice and Lai Kew Chai J refused to reserve any questions of law pursuant to s 60 of the Supreme Court of Judicature Act and, in the absence of such reservation, neither the Court of Criminal Appeal nor the Board had any jurisdiction to entertain any appeal. If it can be shown that there were questions of law of public interest which should have been reserved for decision by the Court of Criminal Appeal and that this would have led to the quashing of the convictions either by the Court of Criminal Appeal or on appeal by the Board, it must surely be appropriate, to quote Lord Simon's words 'that the conviction(s) should not be conclusive against the accused in the course of disciplinary proceedings, the object of which themselves is, after all, to promote justice'.

Their Lordships have from the outset entertained no doubt that these convictions do indeed raise serious questions of law and they find it difficult to understand how any serious question of law arising in a criminal case on which a person's conviction of a grave offence may depend can be said not to be 'of public interest' within the meaning of s 60(1) of the Supreme Court of Judicature Act. In the end, therefore, the determination of the appeal turns on the question whether the convictions are vitiated by errors of law.

The accounts charge

Section 199 of the Penal Code, as already pointed out, creates an offence of the same gravity as perjury under s 193. The language, if in any way ambiguous, should be construed narrowly to restrict the ambit of the criminal net which the section casts. But, in their Lordships' judgment, there is really no ambiguity. What is required is a declaration which is per se admissible 'as evidence of any fact'. A statement which is not a statutory declaration, but which is relied on by the deponent to an affidavit containing a statement of information and belief and is exhibited to the affidavit to show the source of the deponent's information and belief is not admissible *as* evidence of the facts stated, although it may be received *in* evidence. The evidence admissible to prove the facts stated is the deponent's affidavit of his information and belief, not the statement relied upon as the source of it. Any other construction of s 199 would create a potential offence of perjury by the maker of a casual statement to a third party who later relied upon it in an affidavit of information and belief or, to take another example canvassed in argument, by a witness who gave a proof of evidence to a solicitor which was later put in evidence by agreement of the parties. It can make no difference whether or not the maker of the statement or the witness who signed the statement or the witness who signed his proof knew that the statement or proof was likely to be put in evidence.

It follows, in their Lordships' judgment, that the charges against the appellant and Wong under s 199 were misconceived in law, as Judge Khoo held, quite apart from any question on the merits as to whether the accounts verified by the declaration ought to have included reference to the transactions which were the subject of the cheque charges. The appellant's conviction on this charge was fatally flawed.

The cheque charges

It is fundamental to a proper understanding of the transactions which gave rise to the cheque charges to appreciate the legal implications of the fact that the three cheques were given by way of voluntary donation. Each cheque made payable to the Workers' Party was a revocable mandate to the drawer's bank to pay the amount shown and a revocable promise to the Workers' Party that the amount would be paid. At any time before the cheque was presented for payment or negotiated by the Workers' Party the drawer could revoke the mandate and the promise by stopping payment of the cheque. The Workers' Party could not sue on the cheque because it was given for no consideration. It follows that the drawer, as donor, could at any time before the cheque was presented for payment or negotiated by the Workers' Party give authority to any person holding the cheque to dispose of it as the donor wished. It is fair to all concerned to point out that these important considerations do not appear to have been fully appreciated at any stage in the criminal proceedings or to have been adequately formulated in argument until the matter reached the Board.

The $2,000 and $200 cheque charges

As related earlier in this judgment, the evidence of the appellant was to the effect that the $2,000 cheque had been endorsed over to Madam Chiew's solicitors with the full authority of the drawer, Dr Chew. Judge Khoo pointed out that this was the only evidence of Dr Chew's

intention, that it was substantially confirmed by Dr Chew's statutory declarations and that the prosecution had had every opportunity to call Dr Chew but had not done so. As their Lordships read Judge Khoo's judgment, he accepted the appellant's evidence on this issue without reserve or qualification.

On appeal the Chief Justice quoted two short passages from the judgment of Judge Khoo which read as follows:

> At the conclusion of the trial, the only evidence I had concerning the intentions of both Dr Chew and Ping when donating their respective cheques were the testimonies of both accused, although in the course of the prosecution's case, the defence had tendered two statutory declarations sworn to by Dr Chew, albeit in another (the receivership) proceeding (exhibit D4 and D5) which substantially confirmed what the second accused had said regarding her donation.
>
> ... In respect of these two charges, the prosecution had to my mind failed to prove an essential ingredient of the offence, namely, that the $2,000 and $200 cheques were the property of the Workers' Party.

The Chief Justice went on:

> It seems to me implicit in these two passages that the trial judge's finding that the prosecution had failed to prove that the $2,000 cheque was the property of the Workers' Party was because he construed the contents of Dr Chew's two statutory declarations as substantially confirming Jeyaretnam's evidence and *not because he found Jeyaretnam to be a credible witness whose evidence he accepted.* (emphasis added)

Their Lordships can find no warrant whatever for the view that Judge Khoo did *not* find the appellant to be a credible witness whose evidence on this issue he accepted. But this was the cornerstone of the Chief Justice's judgment on this charge. As an appellate judge who had not seen or heard the witnesses, it was only if he could validly reject the trial judge's finding of primary fact based on acceptance of witnesses whose evidence he had seen and heard that he, the appellate judge, could substitute his own findings of fact. This the Chief Justice then proceeded to do. He ignored the fact that the prosecution had taken a statement from Dr Chew and subpoenaed her as a witness, but elected not to call her. He repeatedly referred to the failure of the defence to call Dr Chew. Two key passages in his judgment read as follows:

> I am unable to accept Jeyaratnam's evidence that there was a note to him from Dr Chew and consequently I do not accept his evidence of their subsequent telephone conversation for the following reasons. It was highly unlikely that Dr Chew would write the words 'Workers' Party' on the face of the cheque and send it to Jeyaratnam with a note, the contents of which were as related by Jeyaratnam, if she did not intend to donate the sum specified on its face to the Workers' Party. If her intention was different from that as expressed on the face of the cheque, *her* evidence was *necessary* to explain why she wrote the words 'Workers' Party' on the face of the cheque when she intended someone else to be the donee of her $2,000 gift and, if her intention was to donate the $2,000 to Jeyaratnam to be used by him for any purpose he thought fit, it was *essential* for *her* to give an explanation why she named the Workers' Party and not Jeyaratnam as the payee on the face of the cheque ... (emphasis added)
>
> ... In my judgment, it was sufficient for the prosecution to rely on the cheque itself as proof that the cheque was the property of the Workers' Party but, having regard to the nature and content of the defence on the issue of Dr Chew's intention, the defence should have called her as a witness who could give evidence in support of Jeyaratnam's evidence.

This judgment starts from a false premise with respect to the trial judge's assessment of the evidence he had heard and proceeds upon a clear misdirection with respect to the onus of proof. It cannot be supported.

On the $200 cheque charge the trial judge again clearly accepted the evidence of Wong as to the circumstances in which the donor, Ping, had altered his cheque to make it payable to bearer. The Chief Justice, after citing a lengthy passage from the judgment of Judge Khoo, said:

> If the correct inference from that passage was that the trial judge accepted Wong's account of what Ping said, it is clear that he did not base it on his acceptance of Wong as a reliable and credible witness and that he failed to observe, analyse or consider the undisputed facts and material probabilities.

Beyond this their Lordships need only quote two other critical passages from the Chief Justice's judgment as follows:

> It seems to me to be plain that by naming the Workers' Party as the payee in his cheque, Ping's intention must be taken to have been that the property in the cheque should pass to the Workers' Party as a donation from him.
>
> ... In my judgment, on a full consideration of the material evidence and the circumstances and bearing in mind that an appellate court should be slow in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses but is nonetheless duty bound to review at large the evidence upon which that finding was reached, I am satisfied that the trial judge was wrong in accepting Wong's account and in finding that Ping had no intention of transferring the property in his cheque to the Workers' Party. I am also satisfied that Wong's account of what Ping said when he handed his cheque to Wong was untrue. It follows, in my opinion inescapably, that Jeyaratnam's recollections, as given in evidence by him, that Wong told him Ping wanted to give something for Madam Chiew's costs must also be untrue as was his recollection that he endorsed it so that they could get the money for Madam Chiew. Accordingly, I find that at all material times Ping's cheque was the property of the Workers' Party.

There is much besides by way of a purported analysis of the evidence by which the Chief Justice seeks to justify his direct rejection of the evidence which the trial judge had plainly accepted. But their Lordships find the reasoning wholly unconvincing. On this issue the trial judge *did* accept Wong as a reliable and credible witness and found his evidence to be corroborated by a genuine

contemporary document which the prosecution had vainly sought to challenge and which the Chief Justice ignored. In setting out to controvert the trial judge's primary findings of fact on this central issue, the Chief Justice patently exceeded the proper function of an appellate court and wholly ignored the advantage enjoyed by the trial judge who had seen and heard the witnesses. This amounted to a serious error of law which vitiated the Chief Justice's decision.

Having reached these conclusions, it is unnecessary for their Lordships to examine the further question whether it was open to the Chief Justice to reverse the finding of the trial judge on the issue of the fraudulent intent of the accused.

The $400 cheque charge

This was perhaps the simplest case of all and here it was the trial judge who fell into error probably because the right point was never clearly taken. On the prosecution's own evidence, the case against the accused was bound to fail. Willie Lim's cheque made payable to the Workers' Party had never been negotiated or presented for payment. It remained, therefore, an imperfect gift which Willie Lim was fully entitled to withdraw. That is just what he did. On his own evidence, led for the prosecution, precisely in order to prevent the proceeds of the cheque going to the receiver for Tay, to whom he obviously did not want to make a voluntary gift, he altered the cheque to make it payable to cash. It was just as if he had stopped payment of the cheque or torn it up and made a gift of cash to Wong. In the circumstances no offence by Wong or the appellant was committed.

Conclusion

The Workers' Party never had more than a defeasible title to the proceeds of the cheques. Before the title was perfected the cheque was in each case lawfully disposed of in accordance with the donor's instructions. The appellant and Wong were innocent of any offence under s 421 and even if the declaration verifying the accounts had been one to which s 199 applied, they had a good defence on the merits to the accounts charges.

It was for these reasons that their Lordships allowed the appeal. The respondents must pay the appellant's costs of and occasioned by the disciplinary proceedings and of the appeal to the Board.

Their Lordships have to record their deep disquiet that by a series of misjudgments the appellant and his co-accused Wong have suffered a grievous injustice. They have been fined, imprisoned and publicly disgraced for offences of which they were not guilty. The appellant, in addition, had been deprived of his seat in Parliament and disqualified for a year from practising his profession. Their Lordships' order restores him to the roll of advocates and solicitors of the Supreme Court of Singapore, but because of the course taken by the criminal proceedings, their Lordships have no power to right the other wrongs which the appellant and Wong have suffered. Their only prospect of redress, their Lordships understand, will be by way of petition for pardon to the President of the Republic of Singapore.

Appeal allowed.

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